



U.S. Department of Justice

Immigration and Naturalization Service

DR

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



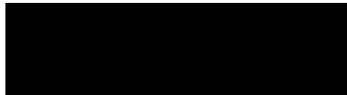
File: EAC 01 025 50889

Office: VERMONT SERVICE CENTER

Date:

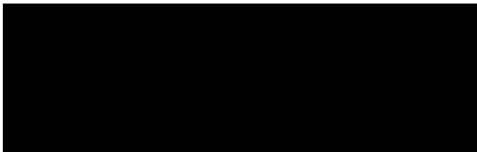
JAN 14 2002

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a manufacturing company that has 70 employees and a gross annual income of \$800,000. It seeks to employ the beneficiary as a mechanical engineer for a period of three years. The director denied the petition finding that the petitioner had failed to establish that the beneficiary would be employed in a specialty occupation.

On appeal, counsel for the petitioner asserts the petitioner requires the services of a mechanical engineer to research, plan and design mechanical systems. Counsel has also submitted financial documentation relating to the petitioner.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) provides that a petitioner can qualify the offered position as a specialty occupation if the petitioner can establish that:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a

baccalaureate or higher degree.

Upon review, the record of proceeding establishes that the beneficiary will be performing the duties of mechanical engineer and that the proffered position is a specialty occupation.

The director denied the petition holding that the petitioner had failed to establish that it had sufficient work for and resources available to establish that the beneficiary would be performing services in a specialty occupation. The director did not question whether the proffered position of mechanical engineer qualified as a specialty occupation or whether the beneficiary had a bachelor's or higher degree or its equivalent in a specific specialty.

Counsel has submitted sufficient evidence on appeal overcoming the basis for the director's decision. The record establishes that the petitioning entity has been in business since 1990. The record also establishes that the beneficiary will be involved in performing the duties of a mechanical engineer. Finally, the record reflects that the beneficiary has the equivalent of a bachelor's degree in mechanical engineering. As a result, the petition is approved.

ORDER: The appeal is sustained.